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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,407	08/01/2000	Allan Rosencwaig	TWI-10820	6057

7590

02/22/2002

STALLMAN & POLLACK LLP

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EXAMINER

SONG, HOON K

ART UNIT

PAPER NUMBER

2882

DATE MAILED: 02/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/629,407

Applicant(s)

ROSENCWAIG ET AL.

Examiner

Hoon K Song

Art Unit

2882

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                      | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                             | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6, 10</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Drawings***

Figure 1-2, and 5 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

New formal drawings are required in this application because hand wrote drawings are not preferred. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to because box, 60 in figure 1 is empty. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application

Art Unit: 2882

being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-2, 8-12, 18-21, and 27-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Komiya et al. (US 6040198).

Regarding claims 1, 11, 20 and 29, Komiya teaches a method and apparatus comprising:

Generating a probe beam of X-rays (column 5 line 33);

Directing the probe beam onto the surface of the patterned wafer such that the spot size of the probe beam is large relative to the feature size of the pattern on the surface of the patterned wafer (column 5 line 34+);

Measuring the intensity of various X-rays as reflected from the patterned wafer to generate reflectivity data (column 5 line 37+); and

Analyzing the reflectivity data to determine characteristics of the thin film layers (abstract).

Regarding claims 2, 12 and 21, Komiya teaches that the characteristics include thin film layer thickness (column 6 line 4+).

Regarding claims 8, 18, 27 and 30, Komiya teaches that the analyzing the reflectivity data step includes applying a Fourier transform (column 3 line 18+).

Regarding claim 9, 19, 28, Komiya teaches that the analyzing the reflectivity data step includes applying a transform function to the reflectivity data and further wherein the transform function is chosen based on a comparison of the reflectivity data with x-

Art Unit: 2882

ray reflectivity data corresponding to measurements made on an unpatterned region of a semiconductor wafer (figure 2, column 6 line 48+).

Regarding claims 10 and 31, Komiya teaches that the reflectivity data includes data measuring reflected x-ray intensity as a function of angle of incidence (figure 5a).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 3-7, 13-17 and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Komiya et al in view of Koppel (US 569548).

Regarding claim 3-6, 13-16 and 22-25, Komiya does not specifically teach about detectors.

However, Koppel teaches different kinds of detectors (column 4 line 48+).

In view of Koppel, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to adopt those different kinds of detectors in order to resolve the x-rays reflecting from the test sample along the one axis (column 4 line 50). Accordingly, one would be motivated to adopt those detectors because they are well known and preferably used in the radiation detecting art (column 4 line 55+).

Regarding claims 7, 17 and 26, Komiya does not specifically teach a directing step.

However, Koppel teaches the directing step including focusing and reflecting the x-rays using a curved monochromator (37, figure 2).

In view of Koppel, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to adopt the focusing and reflecting step in order to direct the x-ray (column 3 line 17+). Accordingly one would be motivated to adopt the directing step because it would improve the x-ray flux directed toward the sample surface (column 3 line 58+).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoon K Song whose telephone number is 703-308-2736. The examiner can normally be reached on 8:30 AM - 5 PM, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Kim can be reached on 703-305-3492. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-4858 for regular communications and 703-308-7724 for After Final communications.

Application/Control Number: 09/629,407

Page 6

Art Unit: 2882

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

Hoon K. Song  
February 19, 2002

  
ROBERT H. KIM  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800